

APPEAL UNDER ARBITRATION ACT NO. 11 OF 1996.

The Board of Trustees
of the Port of Mormugao, a
body Corporate set up under
the Major Port Trust Act, 1963
having its office at Headland,
Sada, Goa. ... Appellants.

VERSUS

1. Oriental Fire & General
Insurance Co. Ltd.,
having its office at
Salgaonkar Annexe Bldg.,
Vasco-da-Gama, Goa.
2. Adv. Ramesh Sardessai,
Bicholim, Goa.
3. Adv. H.R. Bharne,
Mala, Panaji, Goa.
4. Adv. G.U. Bhobe,
Opp. Azad Maidan,
Panaji, Goa. ... Respondents.

Mr. V.B. Nadkarni, Senior Advocate with Mr. Y.V. Nadkarni,
Advocate for the Appellants.

Mr. E. Afonso, Advocate for the Respondent No.1.

CORAM: A.M. KHANWILKAR, J.

DATE: 14TH NOVEMBER, 2003.

ORAL JUDGMENT:

This appeal takes exception to the Order
passed by the Umpire dated 6th June, 1983 in
arbitration between the then Mormugao Dock Labour
Board (Administrative Body) and Oriental Fire &
General Insurance Co. Ltd.. Arbitration proceedings
were invoked wherein two Arbitrators were appointed

namely Shri Ramesh Sardessai and Shri H.R. Bharne. Both of them submitted Awards dated 5th May, 1983 and 20th May, 1983 respectively.

2. Shri Ramesh Sardessai, vide his Award found that the Insurance Company was not correct in rejecting the claim of the Dock Labour Board and held that it was liable to pay the Mormugao Dock Labour Board Rs.1,00,000/- being Rs.50,000/- for each of the employees with interest at the rate of 6% per annum from 29.12.1981 till effective payment.

3. On the other hand, Shri Bharne, the other Arbitrator vide his Award dated 20th May, 1983 rejected the claim of the Mormugao Dock Labour Board on the reasoning that it cannot be said that the original policy issued was effective till the date of discovery of the act of infidelity on the part of the two employees involved in the embezzlement. In view of the divergent views the matter was referred to the Umpire Shri G.U. Bhobe, who in turn, by the impugned decision dated 6th June, 1983 has agreed with the opinion expressed by Shri Bharne and held that the Insurance Company was right in rejecting the claim of the Board as the Insurance Company was not liable to pay any amount to the Board.

4. The only question that arises in the fact situation of the present case and as was argued on behalf of the appellants is that whether the clause in the insurance policy which restricted time to file the claim would infract the mandate of Section 28 of the Contract Act 1872.

5. After having gone through the authorities which have been pressed into service in the context of the above question, I have no hesitation in taking the view that the matter is no more res integra, as it is squarely answered in the recent decision of the Apex Court in **National Insurance Co. Ltd. v. Sujir Ganesh Nayak & Co. and another** reported in (1997) 4 S.C.C., 366. The Apex Court has held that an agreement which in effect curtails the period of limitation and prescribes a shorter period other than that prescribed by law would be offending Section 28 of the Contract Act. However there could be agreements which do not seek to curtail the time for enforcement of the right, but which provides the forfeiture or waiver of the right itself if no action is commenced within the period stipulated by the agreement. It is further held that such a clause in the Agreement would not fall within the mischief of Section 28 of the Contract Act. This dictum of the Apex Court squarely answers the issue as raised in

the present appeal.

6. Counsel for the respondent has relied on two other decisions reported in A.I.R. 1994 S.C., 1889 in **The Food Corporation of India v. The New India Assurance Co. Ltd. and others** and in A.I.R. 1976 S.C., 287 in **The Vulcan Insurance Co. Ltd. v. Maharaj Singh and another**. It is seen that both these decisions have been considered in the recent decision of the Apex Court in **National Insurance Co. Ltd.** (Supra).

7. In the circumstances the Appeal fails and the same is dismissed. However, no order as to costs.

A.M. KHANWILKAR, J.

sl.